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November 9, 2015

Agenda No. 2  
07/21/15

TO: SUPERVISOR MICHAEL D. ANTONOVICH, Mayor  
SUPERVISOR HILDA L. SOLIS  
SUPERVISOR MARK RIDLEY-THOMAS  
SUPERVISOR SHEILA KUEHL  
SUPERVISOR DON KNABE

FROM: MARY C. WICKHAM  
Interim County Counsel

A handwritten signature in cursive script, reading "Mary C. Wickham", is written over the printed name and title.

RE: **Report on the County's Wage Enforcement Authority**

**Purpose of Memorandum**

The purpose of this memorandum is to provide your Board with an overview of the County's authority to impose and enforce regulations prohibiting wage theft and the tools available to the County for wage enforcement.

**Summary**

The County has authority under its police power to adopt and enforce ordinances that regulate wages in the unincorporated areas that are not in conflict with State or federal laws. This authority includes the power to enforce the County's minimum wage ordinance, and to impose additional restrictions through the business licensing ordinance when businesses violate the County's minimum wage or other applicable labor laws.

The County also has the power to contract, which can be used to monitor, restrict, and remedy wage theft by businesses with County contracts. The County may also consider exercising its contracting power to engage in a countywide wage enforcement effort by contracting with other jurisdictions to enforce their wage enforcement laws. As an example, the City of San Jose performs wage enforcement by contract for the cities of Sunnyvale and Mountain View.

The following tools are available for wage enforcement:

Regulatory Tools (Police Power)

- Recovery of Administrative Penalties and Back Wages
- Subpoena Power
- Licensing Restrictions
- Retaliation Restrictions or Prohibitions
- Private Right of Action
- Civil Lawsuits, Judgments, Levies, and Liens

Contracting Tools (Contracting Power)

- Wage Compliance Requirements in County Contracts
- Partnerships with Enforcement Authorities

**Background**

On September 29, 2015, the County passed a minimum wage ordinance, which became effective on October 29, 2015. The County's minimum wage ordinance allows the Chief Executive Officer or her designee to begin public education and outreach, create guidelines and rules, and enforce compliance with the ordinance. However, without a subsequent ordinance specifically tailored to enforce violations of the minimum wage ordinance, County enforcement of its minimum wage ordinance would be undertaken pursuant to Chapter 1.25 of the County Code, which applies generally to all violations of the County Code, and which does not include enhanced tools to address wage theft.

Wage theft takes a variety of different forms, including non-payment of the minimum wage or overtime, failure to provide meal and rest breaks or benefits, improper paycheck deductions, and misclassification of employees. Depending on the type of wage theft involved, an employer's action may be subject to State, federal, or local laws.

Since 2003, ten California cities have adopted a local minimum wage ordinance: Berkeley, Emeryville, Los Angeles, Mountain View, Oakland, Richmond, San Diego (pending voter approval), San Francisco, San Jose, and Sunnyvale.<sup>1</sup> These cities also adopted some form of minimum wage enforcement ordinance. The enclosed chart provides a comparison of the cities' enforcement ordinances. (See Enclosure "A.") Key features include: (1) penalties and fines imposed against non-complying employers and a cure period for employers incentivizing compliance; (2) administrative review and appeal to an impartial hearing officer; and (3) the ability of the enforcement agency to subpoena employer records.

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<sup>1</sup> The cities of Santa Monica, Pasadena, and Long Beach, as well as the County of Napa are also considering local minimum wage ordinances.

It is estimated that approximately 15,000 businesses operate in the County's unincorporated areas. (See Enclosure "B.") These businesses will be subject to the County's minimum wage ordinance. In contrast, the County's business licensing ordinance only applies to businesses that include a health or safety component to their operations. Ninety-nine types of businesses and a total of approximately 5,000 business locations are required to obtain a business license.

## **Discussion**

### **1. The County's Authority to Enforce its Wage Regulations**

#### *a. Ordinance Regulating Wage Theft (Police Power)*

The County's authority to regulate is derived from the California Constitution ("Constitution"), State statutes, and the County Charter. Generally, the County's authority to regulate is limited to the unincorporated areas of the County unless specific State statutes allow the County to act countywide.

Article XI, section 7 of the California Constitution states "a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws" of the State. This constitutional grant of authority, or "police power," is the source of the County's authority to independently govern, but it may be exercised only within the territorial limits of the County and is subordinate to State and federal law. Under the doctrine of preemption, if an otherwise valid local law conflicts with State or federal law, the local law is void.<sup>2</sup>

Both State and federal laws permit local governments to establish and enforce higher minimum wage laws. Therefore, the County may adopt and enforce laws regulating its own minimum wage ordinance to address wage theft.

#### *b. Ordinance Regulating Business Licensing (Police Power)*

State law also authorizes the County to license businesses operating within the unincorporated areas of the County.<sup>3</sup> The Department of the Treasurer and Tax Collector ("TTC") administers business licensing for the County pursuant to Title 7 of the County Code. The Business License Commission ("BLC") is authorized to revoke or suspend a business license if that

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<sup>2</sup> State and federal labor laws and enforcement agencies with jurisdiction over employment matters may preempt, and therefore prevent, other forms of local regulation of employment. The Labor Commissioner, as Chief of the State Division of Labor Standards Enforcement ("DLSE"), is responsible for enforcement of all provisions of the California Labor Code, except where the State Legislature has given concurrent enforcement authority to another entity or officer. The DLSE's jurisdiction includes all State laws and penalties relating to the State minimum wage, overtime, how wages are paid, collection of unpaid wages, discrimination against aggrieved employees, and child labor. Various federal agencies, such as the Department of Labor, the Department of the Treasury, the National Labor Relations Board, and the Equal Employment Opportunity Commission have exclusive jurisdiction over federal wage and hour laws, payroll tax, collective bargaining, and anti-discrimination laws.

<sup>3</sup> California Business and Professions Code section 16100; Revenue and Taxation Code section 7284.

business commits an unlawful act or violates any rule "adopted by any governmental agency relating to the licensee's business."

The BLC does not generally monitor compliance with wage regulations in connection with reviewing a business license. Your Board may amend Title 7 to include applicable wage regulations as a component of business licensing. However, because the County only issues business licenses for a small segment of businesses, this enforcement power would not cover all businesses in the unincorporated areas without amending the ordinance to apply to all businesses.

The County could also require all businesses in the unincorporated areas to register with the County. Such registration could provide the County with basic information regarding unincorporated area businesses, such as type, number of employees, and location, and also make the County aware of the business activities for wage compliance purposes.

*c. Wage Enforcement in Contracts (Contracting Power)*

Distinct from the County's power to regulate wage theft by ordinance, the law also allows the County to enter into contracts and place restrictions on contractors it chooses to do business with.<sup>4</sup> The County already uses this power by requiring contractors to provide their employees with paid days of jury service. Chapter 2.203 of the County Code requires each business that contracts with the County to adhere to a written jury service policy that requires the contractor to provide five paid days of jury service. Among other remedies, if a contractor fails to comply with the jury service requirement, the contract may be terminated.

Similarly, the County's Living Wage Ordinance requires contractors with Proposition A and cafeteria contracts to pay their employees a "living wage" specified in the Living Wage Ordinance.

The County may impose additional restrictions on its contractors, such as requiring compliance with the County's minimum wage ordinance, identifying or reporting labor law or payroll violations against them, and potentially deducting points in the solicitation process or disqualifying contractors subject to wage theft citations from the County or other enforcement agencies.

However, the County may not impose contract conditions that have a substantial regulatory effect on business outside of the County's geographic market creating a burden on interstate commerce. For example, the County could not mandate that a business pay the County's minimum wage to all employees of that business nationwide.

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<sup>4</sup> Existing County wage enforcement efforts consist primarily of monitoring and enforcing wage provisions in County contracts. The Public Works and Internal Services Departments monitor labor law compliance in public works contracts to ensure prevailing wages are paid. In addition, vendors' compliance with the County's living wage ordinance is monitored by any County department that has living wage contracts.

*d. Contracting with Cities for Wage Enforcement*

Although the County's power is generally restricted to the unincorporated areas, the County may obtain broader authority to act within a city by contract. The County Charter allows the Board to authorize any County department, officer, or commission to perform any and all functions of a city, district, public agency, or public subdivision, at that entity's request and pursuant to a written agreement.

Currently, the County contracts with cities to perform a variety of services, such as health inspections, law enforcement services, building permit issuance, and animal care and control. The County could also contract with cities for wage enforcement. In northern California, the cities of Sunnyvale and Mountain View contract with the City of San Jose to enforce the minimum wage laws of all three cities. Each of these cities enacted similar minimum wage and enforcement ordinances and assigned enforcement responsibilities to the City of San Jose.

**2. Tools Available to Combat Wage Theft**

Based on the law and comparison with other jurisdictions, there are a variety of effective regulatory and contracting tools available to address wage theft within the County. Enclosed with this memorandum is an overview of six regulatory tools and two contracting tools that could be used in the County's efforts to combat wage theft. (See Enclosure "C.")

If you have questions concerning this matter, please contact me, Assistant County Counsel Judy W. Whitehurst at (213) 974-1921, or Senior Associate County Counsel Michael S. Buennagel at (213) 974-1833.

MCW:MSB:bk

Enclosures

c: Sachi A. Hamai  
Chief Executive Officer

Patrick Ogawa  
Acting Executive Officer  
Board of Supervisors

Brian Stiger, Director  
Department of Consumer and Business Affairs

**CITY MINIMUM WAGE ORDINANCE ENFORCEMENT PROVISIONS**  
(Relevant municipal code section shown in bold text in parentheses)

	City of Los Angeles	City and County of San Francisco	City of Berkeley	City of Emeryville	City of Mountain View	City of Oakland	City of Richmond	City of San Diego	City of San Jose	City of Sunnyvale
<i>Enforcement agency</i>	Wage Enforcement Division, Bureau of Contract Administration, Dept. of Public Works.	Office of Labor Standards Enforcement.	Health, Housing & Community Services Department.	Community Development Department	City manager and San Jose Office of Equality Assurance (by contract).	Contracts & Compliance Division.	Employment and Training Department.	To be designated by the city council.	Office of Equality Assurance.	San Jose Office of Equality Assurance (by contract).
<i>Enforcement agency has subpoena power?</i>	Through the Board of Public Works. (188.05(B))	Yes. (2A.23(c))	Through the city attorney. (13.99.080 (C))	City (without further specification) has the power to issue subpoenas. (5-37.06(c))	Through the city attorney. (42.19(c))	No, but employers must permit access to work sites and inspection and copying of records by city representatives. (5.92.050(E))	Through the city attorney. (7.108.080 (C))	Not specified.	Through the city attorney. (4.100.080 (C))	Through the city attorney. (3.80.080(c))
<i>Enforcement agency has the power to issue regulations with the force of law?</i>	Yes. (188.14)	Yes, after a noticed public hearing and approval by the city attorney. (12R.22))	Yes. (13.99.080 (A))	Yes. (5-37.06(a))	Yes. (42.19(a))	Yes.	Yes. (7.108.080 (A))	No.	Yes. (4.100.080 (A))	Yes. (3.80.080(a))

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HOA.1195802.2

**CITY MINIMUM WAGE ORDINANCE ENFORCEMENT PROVISIONS**  
(Relevant municipal code section shown in bold text in parentheses)

	City of Los Angeles	City and County of San Francisco	City of Berkeley	City of Emeryville	City of Mountain View	City of Oakland	City of Richmond	City of San Diego	City of San Jose	City of Sunnyvale
<i>Enforcement agency required to keep complaints confidential?</i>	Yes, to the extent allowed by law. (188.05(A))	Yes, to the extent allowed by law. (12R.7(c)(3))	Yes, to the extent allowed by law. (13.99.080 (B))	Yes, to the extent allowed by law. (5-37.06(b))	Yes, to the extent allowed by law. (42.19(b))	No.	Yes, to the extent allowed by law. (7.108.080 (B))	No.	Yes, to the extent allowed by law. (4.100.080 (B))	Yes, to the extent allowed by law. (3.80.080(b))
<i>Employer required to post notice that it is being investigated for MW violation?</i>	No, but required to post notice of determination finding that it violated MW ordinance. (188.06(D))	Yes. (12R.7(c)(3))	Yes. (13.99.080 (B))	No.	Yes. (42.19(b))	No.	Yes, if required by the enforcement agency. (7.108.080 (B))	No.	Yes. (4.100.080 (B))	Yes. (3.80.080(b))
<i>Is enforcement agency required first to attempt informal resolution?</i>	No.	No.	Yes. (13.99.080 (D))	Yes. (5-37.06(d))	Yes. (42.19(d))	No.	No.	No.	Yes. (4.100.080 (D))	Yes. (3.80.080(d))
<i>Who appoints hearing officer?</i>	Head of the Wage Enforcement Division. (188.10(B))	City controller. Hearing officer cannot be an employee of the Office of Labor Standards Enforcement. (12R.21(b))	City manager. (1.28.080)	Not specified.	City manager. (1.20)	Not applicable.	City manager. (2.62.080)	City manager. (12.0405)	City manager. (1.15.080)	City manager. (1.05.070)

Enclosure "A"

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**CITY MINIMUM WAGE ORDINANCE ENFORCEMENT PROVISIONS**  
(Relevant municipal code section shown in bold text in parentheses)

	City of Los Angeles	City and County of San Francisco	City of Berkeley	City of Emeryville	City of Mountain View	City of Oakland	City of Richmond	City of San Diego	City of San Jose	City of Sunnyvale
<i>When are administrative penalties imposed?</i>	When a notice of determination is issued. Penalties are due even if the violation is remedied during the compliance period. <b>(188.06(C))</b>	When an administrative citation is issued. <b>(12R.20(7))</b> Enforcement agency has option to issue a notice of violation with a compliance period of 10-21 days and no penalties. <b>(12R.16(a), 12R.18(b))</b>	When an administrative citation is issued. <b>(1.28.030(B), 13.99.090 (A)(1))</b> Enforcement agency has option to issue a compliance order with no penalties. <b>(13.99.090 (A)(2))</b>	When an administrative citation is issued. <b>(5-37.07(a)(1))</b> Enforcement agency has option to issue a compliance order with no penalties. <b>(5-37.07(a)(2))</b>	When an administrative citation is issued. <b>(1.28(b), 42.20(a)(1))</b> Enforcement agency has option to issue a compliance order with no penalties. <b>(42.20(a)(2))</b>	Not applicable. Oakland's ordinance does not provide for administrative penalties payable to the city, only civil penalties recoverable by employee in a lawsuit. <b>(5.92.050(G))</b>	When an administrative citation is issued. <b>(7.108.090 (C))</b> Employer must be provided with an opportunity to abate the violation through a notice of violation and demand to abate before issuance of an administrative citation with penalties. <b>(7.108.090 (A))</b>	Not applicable. San Diego's ordinance does not provide for administrative penalties payable to the city, only civil penalties recoverable by employee in a lawsuit. <b>(39.0112(d))</b>	When an administrative citation is issued. <b>(4.100.090 (A))</b> Enforcement agency has option to issue a compliance order with no penalties. <b>(1.14.030 (B), 4.100.090 (A))</b>	When an administrative citation is issued. <b>(3.80.090 (a)(1))</b> Enforcement agency has option to issue a compliance order with no penalties. <b>(1.06.040, 3.80.090 (a)(2))</b>

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**CITY MINIMUM WAGE ORDINANCE ENFORCEMENT PROVISIONS**  
(Relevant municipal code section shown in bold text in parentheses)

	City of Los Angeles	City and County of San Francisco	City of Berkeley	City of Emeryville	City of Mountain View	City of Oakland	City of Richmond	City of San Diego	City of San Jose	City of Sunnyvale
<i>Enforcement agency can revoke or suspend registration certificates, permits, or licenses?</i>	City can deny an application for a permit if the employer has been found to have violated the MW ordinance within the last 5 years. <b>(103.31(a) (11))</b>	Enforcement agency can request that a city depart- ment revoke or suspend any registra- tion certifi- cate, permit, or license held by an employer. <b>(12R.7(c)(2))</b>	Yes. <b>(13.99.090 (D))</b>	No, but compliance with the MW ordinance is a condition for issuance of a business tax certificate. <b>(3-1.141)</b>	Yes. <b>(42.20(d))</b>	City can consider compliance with MW ordinance when awarding contracts, making land- use decisions, and approving applications to operate or expand in the city. <b>(5.92.050(F))</b>	Yes. <b>(7.108.090 (F))</b>	No.	Yes. <b>(4.100.090 (D))</b>	Yes. <b>(3.80.090(d))</b>

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## CITY MINIMUM WAGE ORDINANCE ENFORCEMENT PROVISIONS

(Relevant municipal code section shown in bold text in parentheses)

Retaliation provisions?	City of Los Angeles	City and County of San Francisco	City of Berkeley	City of Emeryville	City of Mountain View	City of Oakland	City of Richmond	City of San Diego	City of San Jose	City of Sunnyvale
	Retaliation prohibited; adverse action within 90 days of employee exercising right creates rebuttable presumption of retaliation; acts of retaliation entitle employees to triple back wages and penalties; fines payable to city are \$1,000 per employee. (188.04)	Retaliation prohibited; adverse action within 90 days of employee exercising right creates rebuttable presumption of retaliation; \$1,000 fine per employee. (12R.6)	Retaliation prohibited; adverse action within 90 days of employee exercising right creates rebuttable presumption of retaliation; \$1,000 fine per employee. (13.99.070)	Retaliation prohibited; employee may not be discharged within 120 days of exercising right without evidence of just cause for discharge; cost of compliance may not be passed on to employees; \$1,000 fine per employee. (5-37.07(d))	Retaliation prohibited; adverse action within 90 days of employee exercising right creates rebuttable presumption of retaliation. (42.18)	Retaliation prohibited; employee may not be discharged within 120 days exercising right without evidence of just cause for discharge; cost of compliance may not be passed on to employees; \$1,000 fine per employee. (5.92.050)	Retaliation prohibited; adverse action within 90 days of employee exercising right creates rebuttable presumption of retaliation. (7.108.070)	Retaliation prohibited. (39.0111)	Retaliation prohibited; adverse action within 90 days of employee exercising right creates rebuttable presumption of retaliation. (4.100.070)	Retaliation prohibited; adverse action within 90 days of employee exercising right creates rebuttable presumption of retaliation. (3.80.070)

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## CITY MINIMUM WAGE ORDINANCE ENFORCEMENT PROVISIONS

(Relevant municipal code section shown in bold text in parentheses)

	City of Los Angeles	City and County of San Francisco	City of Berkeley	City of Emeryville	City of Mountain View	City of Oakland	City of Richmond	City of San Diego	City of San Jose	City of Sunnyvale
<i>Enforcement agency has power to record a lien with the county recorder?</i>	For unpaid administrative penalties owed to the city only. <b>(188.08(D))</b> City will explore the feasibility of an MOU with the Labor Commissioner to record liens for unpaid wages, as provided by Labor Code §98.2(g). <b>(188.09)</b>	For unpaid administrative penalties owed to the city only. <b>(12R.17(d))</b>	No.	No.	No.	No.	No.	No.	No.	No.

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# Composition of Businesses in the County's Unincorporated Areas

Classification Category	Number of Companies	Percentage by Business
Services	5,866	39.2%
Retail	3,140	21.0%
Food Service	1,023	6.8%
Health Care	949	6.3%
Manufacturing	900	6.0%
Car Wash/Auto/Vehicle	675	4.5%
Wholesale	650	4.3%
Transportation	255	1.7%
Contractors	233	1.6%
Housing & Lodging	201	1.3%
Agriculture	136	0.9%
Garment, Apparel & Textile Mfg	75	0.5%
Landscaping & Gardening	13	0.1%
Other	837	5.6%
<b>Total:</b>	<b>14,953</b>	<b>100.0%</b>

↑ 67%

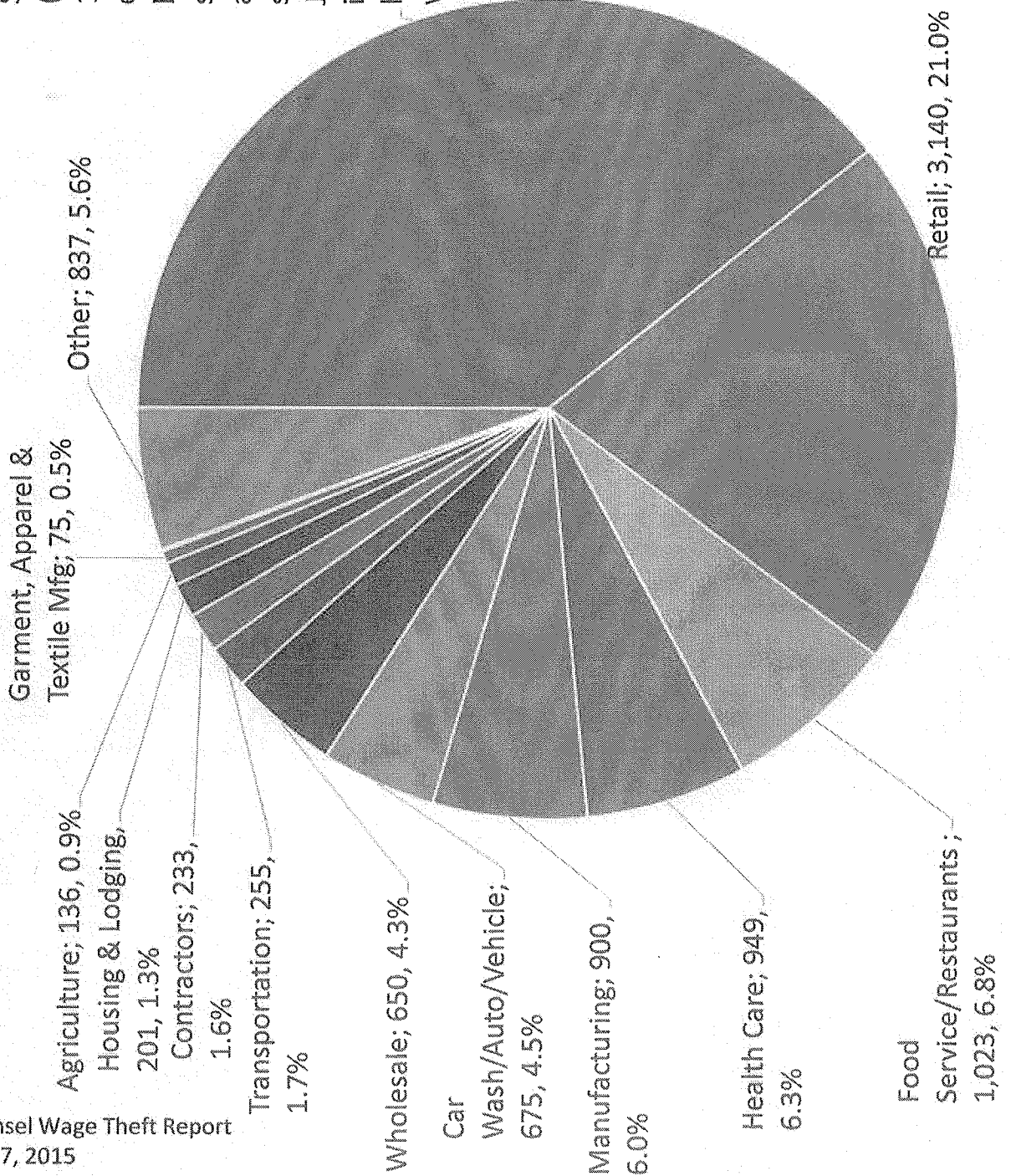
Enclosure "B"

# Businesses In Unincorporated Areas of Los Angeles County Composition by Classification Category

Services; 5,866, 39.2%  
(Services comprises  
114 subcategories,  
everything from  
laundries and beauty  
salons to attorneys  
and accountants. One  
subcategory,  
Janitorial, has been  
identified as having a  
high incidence of  
wage theft)

Total Number  
of Businesses:  
14,953

Landscaping &  
Gardening; 0.1%  
(too small to be  
reflected)



## TOOLS AVAILABLE FOR WAGE ENFORCEMENT

### **A. Regulatory Tools (Police Power)**

#### **1. Recovery of Administrative Penalties and Back Wages**

State law authorizes the County to issue an administrative fine or penalty for violations of the County Code. Chapter 1.25 of the County Code contains the enforcement process for violations of the County Code unless otherwise provided for in a separate section. The process includes: (1) designation of an enforcement officer; (2) a notice of violation; (3) an administrative fine determined by the enforcement officer; (4) the possibility for a correction period; (5) a noncompliance fee either in conjunction with the administrative fine, or after the failure to correct; (6) the right to an administrative hearing to challenge the fines and fees, as well as the procedures to conduct the hearings; and (7) the collection process for failure to pay the fines and fees which may include the imposition of a lien.

The County Minimum Wage Ordinance adopted on September 29, 2015, relies on County Code Chapter 1.25 for enforcement. However, similar to other jurisdictions, your Board may create a separate companion ordinance that provides for enforcement of the minimum wage. Creation of an enforcement ordinance would allow the County or employee to recover back wages to be paid to the employee and tailor fines and penalties for specific violations of the minimum wage ordinance, such as daily fines for ongoing violations and penalties for retaliatory actions against employees. An enforcement ordinance could also blend the existing enforcement provisions of Chapter 1.25 of the County Code with the ability to recover back wages and specifically tailored fines and penalties.

#### **2. Subpoena Power**

Nearly all cities in California that have established a minimum wage ordinance have also adopted an enforcement ordinance providing access to subpoenas that can be used to compel employers suspected of wage theft to open their records to the local enforcement agency. In many cities, subpoena power is vested in the City Attorney as a prosecuting attorney. Most studies on wage theft identify subpoena power as a vital tool to investigate wage theft. The County of Los Angeles has subpoena powers available that can be exercised either through your Board or a County hearing officer.

#### **3. Licensing Restrictions**

Generally, the County may license and regulate private businesses operating within the unincorporated areas, though the County does not currently issue licenses or permits for every business. The County's Business Licensing Ordinance may be amended so that County business licenses may be denied, suspended, or revoked based on licensed entities' non-compliance with applicable wage regulations, such as the County minimum wage ordinance.

Aside from business licensing, other licenses and permits issued by the County may also be conditioned on compliance with wage regulations if allowed by the law governing the license or permit. For instance, the County Health Officer's authority to issue, revoke, or



suspend health permits is established by State law. Under the California Retail Food Code, which applies to certain restaurants and retail food establishments, the Health Officer may revoke or suspend a health permit for certain restaurants if the restaurant does not operate in accordance with all applicable local, State, and federal statutes, regulations, and ordinances. In the City and County of San Francisco, the Department of Public Health has relied on this authority to suspend or revoke certain restaurant health permits based upon findings of noncompliance made by local, State, and federal regulatory agencies, including the San Francisco Office of Labor Standards Enforcement, in a small number of egregious violations.

#### **4. Retaliation Restrictions or Prohibitions**

Most cities have included both a general prohibition against retaliation in their minimum wage ordinances with additional safeguards in their enforcement provisions. These safeguards include rebuttable presumptions of retaliation, bans on discharge or discipline, and prohibitions shifting compliance costs to employees. City ordinances with rebuttable presumptions of retaliation provide that any act by an employer to discipline an employee close in time after that employee asserts that his or her employer committed wage theft is presumed to be an act of retaliation. This shifts the burden of proof to the employer to prove that the disciplinary action was not related to the employee challenging their wages. If the employer fails to meet that burden, the employer will be considered to have violated the ordinance for engaging in retaliation.

Other cities ban an employer from discharging, reducing compensation, or otherwise discriminating against an employee for exercising his or her rights for a period of time, such as 90 or 120 days, after the employee notifies his or her employer of a wage dispute. During this period, cities that use this form of safeguard require employers to justify terminating employees with "clear and convincing evidence of just cause" for the discharge or discipline.

Finally, some cities, such as Oakland, prohibit employers from shifting the cost of complying with a minimum wage ordinance by reducing other employees' compensation, retirement, or non-wage benefits or increases charges for parking, meals, uniforms or other similar employee expenses.

#### **5. Private Right of Action**

In addition to administrative remedies, allowing aggrieved employees, and entities working on behalf of the public, to file a civil lawsuit against an employer for wage theft is also an available tool. This would allow employees, individually or collectively, and public interest groups acting on behalf of employees, to sue employers directly to recover wages, civil penalties, and attorney fees against offending employers. It would not require a County complaint as the first administrative step before a lawsuit could be filed. All ten cities with wage enforcement ordinances have included a private right of action.

## **6. Civil Lawsuits, Judgments, Levies, and Liens**

In instances where an employer fails to comply with administrative enforcement efforts, your Board may authorize the County Counsel to file civil lawsuits in Superior Court to compel employers to comply. Through civil litigation, a County enforcement agency may seek several remedies against a non-compliant employer, including back-pay and interest for aggrieved employees, penalties, and injunctive relief to prevent future wage theft violations. If the County obtains a judgment against an employer, the County may enforce the judgment using a variety of procedures including bank account levies, and liens against real and personal property.

In certain circumstances, the County may seek to create liens against personal or real property of an employer that commits wage theft using a prejudgment writ of attachment. Such an attachment, if granted by a judge, creates a judicial lien on an offending employer's property before a final judgment is obtained. Once the attachment applies, the asset may not be transferred or sold, so it is available later to satisfy a judgment. Seeking an attachment requires a civil action to be filed against the employer and numerous legal constraints limit their availability except in rare situations. In those circumstances, a prejudgment writ of attachment would preserve an offending employer's assets in order to recover stolen wages.

### **B. Contracting Tools (Contracting Power)**

#### **1. Wage Compliance Requirements in County Contracts**

The County may use its contracting power to restrict and deter wage theft committed by businesses with whom the County contracts. During the bid solicitation process, the County may penalize bidders that have committed wage theft by deducting points from their evaluation score. The County may also require new contracts include terms requiring employers to comply with the County's minimum wage ordinance and impose penalties for violations. For contractors currently doing business with the County, the County could seek to have those contracts amended to expressly require the contractor notify the County if that contractor is determined to have violated a wage law (such as by a court of law or a DLSE wage order) and authorize the County to penalize that contractor until the wage violation is remedied.

#### **2. Partnerships with other Enforcement Authorities**

The County may also enter into partnerships with other enforcement agencies, such as the DLSE. Such partnerships could range from informal arrangements for exchanging information or passing referrals to the appropriate jurisdiction, to the other enforcement agency delegating authority to the County. In addition, the County could request that the State Legislature grant broader enforcement authority to the County, or alternatively, the County could request an enforcement agency, such as the DLSE, to delegate their enforcement authority to the County by contract.



Finally, Assembly Bill 970 (Nazarian), signed into law on October 11, 2015, authorizes the DLSE, at the request of a local agency such as the County, to enforce local laws regarding overtime hours or minimum wage provisions and to issue citations and penalties for violations, except when the local entity has already issued a citation for the same violation. It does not give the County the power to investigate State law violations. However, this may assist the County with enforcement.